

THE KARNATAKA ELECTRICITY SUPPLY UNDERTAKINGS (ACQUISITION) ACT, 1974

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SCHEDULE.

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STATEMENTS OF OBJECTS AND REASONS

I

Act 36 of 1974.- Seven private electrical undertakings are presently engaged in the distribution and supply of electricity in their respective licensed areas in the Belgaum Division of the State under the licenses granted to them by the erstwhile Bombay Government under section 3 of the Indian Electricity Act 1910. In addition to these, a co-operative society set up under the Pilot Scheme of the Government of India has also been authorised under Indian Electricity Act to distribute power within the Hukkeri Taluk of the State. The period of licenses granted to the seven private electrical undertaking by the erstwhile Bombay Government vary from 30 to 40 years. As and when the licenses expire, the State Electricity Board has under the provision of section 6 of the Indian Electricity Act the option of purchasing the undertakings after giving necessary notice to the licensees, in writing and the licensees are required to sell their undertaking to the Board.

With the importance given by Government to the Rural Electrification Programme for economic development of the rural areas, it has been found that the growing demands for the rural parts of the licensed area may not be met adequately by the licensees and the interest of the consumers in these area will be better served by the Board with its vast organisational and material resources at its disposal. In the present changed circumstances, it is also considered that it will not be a healthy practice to allow private licensees to function when the Statutory Electricity Board charged with the same duty is functioning in the State. To do away with this anomalous situation, it is considered necessary to take over all the private electrical undertakings by a special legislation so that the supply of power to the consumers in the respective licensed area will be smooth and satisfactory as in the case of other areas where electricity is applied by the State Electricity Board.

It is accordingly proposed to take over all the seven private electrical undertakings and hence the Bill.

(Published in the Karnataka Gazette (Extraordinary) Part IV- 2A, as No. 789, dated 13-5-1974 at page 22.)

II

Amending Act 5 of 1976.- Sub-section (2) of section 13 of the Act enables the Government to make an application for relief in respect of any of the transactions enumerated in sub-section

(1) which, in the opinion of Government, is unreasonable or made with lack of prudence, within one year from the date of vesting to a Tribunal to be constituted under section 14.

Writ petitions were filed in the High court of Karnataka challenging the validity of the Act and also against the possession by the Karnataka Electricity Board of the undertakings which have been taken over by Government. These writ petitions were admitted and a stay was also granted by the High Court of Karnataka. Against the stay both the State Government and the Karnataka Electricity Board preferred appeals which were allowed with certain restrictions but the possession of the undertaking by the Karnataka Electricity Board remained unaltered.

Consequent to the litigations that ensued immediately after the vesting date, the majority of ex-licensees did not hand over all documents pertaining to the undertakings vested in Government and few documents were handed over by others. Also the restrictions imposed by the High Court, rendered the Karnataka Electricity Board unable to take action under sub-section

(3) of section 8 of the Act to secure possession of all the assets and documents of the undertakings. Hence it was considered necessary to extend the period of limitation for making application for relief under section 13 from one year to two years.

(Obtained from L.A. Bill No. 3 of 1976.)

(Published as Notification No.10884 LA dated 20.1.1976 in Karnataka Gazette dated 22-1-1976 at page 27.)

III

Amending Act 6 of 1977.- Sub-section (2) of section 13 of the Act enables the Government to make an application for relief in respect of any of the transactions enumerated in sub-section

(1) which, in the opinion of Government, is unreasonable or made with lack of prudence, within one year from the date of vesting to a Tribunal to be constituted under section 14.

Writ petitions were filed in the High Court of Karnataka challenging the validity of the Act and also against the possession by the Karnataka Electricity Board of the undertakings which have been taken over by Government. These writ petitions were admitted and a stay was also granted by the High Court of Karnataka. Against the stay both the State Government and the Karnataka Electricity Board preferred appeals which were allowed with certain restrictions but the possession of the undertaking by the Karnataka Electricity Board remained unaltered.

Consequent to the litigations that ensued immediately after the vesting date, the majority of ex-licensees did not hand over all documents pertaining to the undertakings vested in Government and few documents were handed over by others. Also the restrictions imposed by the High Court, rendered the Karnataka Electricity Board unable to take action under sub-section

(3) of section 8 of the Act to secure possession of all the assets and documents of the undertakings. Hence it was considered necessary to extend the period of limitation for making application for relief under section 13 from two years to three years.

In the circumstances, an Ordinance was promulgated. This Bill seeks to replace the said Ordinance.

(Published in the Karnataka Gazette (Extraordinary) Part IV- 2A, as No. 238, dated 28-3-1977 at pages 2-3.)

IV

Amending Act 23 of 1978.- Sub-section (2) of section 13 of the Act enables the Government to make an application for relief in respect of any of the transactions enumerated in sub-section

(1) which, in the opinion of Government, is unreasonable or made with lack of prudence, within one year from the date of vesting to a Tribunal to be constituted under section 14.

Writ petitions were filed in the High court of Karnataka challenging the validity of the Act and also against the possession by the Karnataka Electricity Board of the undertakings which have been taken over by Government. These writ petitions were admitted and a stay was also granted by the High Court of Karnataka. Against the stay both the State Government and the Karnataka Electricity Board preferred appeals which were allowed with certain restrictions but the possession of the undertaking by the Karnataka Electricity Board remained unaltered.

Consequent to the litigations that ensued immediately after the vesting date, the majority of ex-licensees did not hand over all documents pertaining to the undertakings vested in Government and few documents were handed over by others. Also the restrictions imposed by the High Court, rendered the Karnataka Electricity Board unable to take action under sub-section

(3) of section 8 of the Act to secure possession of all the assets and documents of the undertakings. Hence it was considered necessary to extend the period of limitation for making application for relief under section 13 from three year to five years.

Hence the Bill.

(Published in the Karnataka Gazette (Extraordinary) Part IV- 2A, as No. 1128, dated 9-8-1978 at page 3.)

V

Amending Act 14 of 1981.- In the Karnataka Electricity Supply Undertakings (Acquisition) Act 1974 by which seven private electric companies were taken over by the Government, the amount payable for acquisition is determined on the book value of the assets. There is no provision now in the Act for payment of solatium. Normally, in the case of

acquisitions, solatium is paid in view of the compulsory nature of the acquisition. Analogous statutes in several other States provide for the payment of such solatium. In these circumstances and having considered the representation made by the Companies, it is intended to provide for payment of solatium at ten per cent by suitably amending the Act.

Hence the Bill.

(Published in the Karnataka Gazette (Extraordinary) Part IV- 2A, as No. 101, dated 3-2-1981 at page 3.)

VI

Amending Act 9 of 1995.- The High Court of Karnataka in their order in W.P.Nos 6761/1974 and 6762/1974 struck down the Karnataka Electricity supply Undertakings (Acquisition) Act, 1974 (Karnataka Act 36 of 1974) on the ground that the Act was unworkable as it did not provide for some machinery or adjudicatory forum for resolution of the dispute arising from the provisions of the Act, particularly section 5, 6 and 7. The matter is now pending before the Supreme court in Civil appeal No. 2573 / 74 of 1982 and likely to be listed for final hearing shortly.

Therefore, it is considered necessary to amend the Act to provide for making application to the tribunal constituted under section 14 in respect of disputes arising from sections 5, 6 & 7.

Since the matter was urgent and the Karnataka Legislative Assembly was not in session, the Karnataka Electricity Supply Undertaking (Acquisition) (Amendment) Ordinance, 1995 (Karnataka Ordinance 2 of 1995) was promulgated to achieve the above object.

Hence the Bill.

(Obtained from L.A. Bill No. 7 of 1995.)

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KARNATAKA ACT NO. 36 OF 1974

(First published in the Karnataka Gazette, Extraordinary on the Seventeenth day of December, 1974)

THE KARNATAKA ELECTRICITY SUPPLY UNDERTAKINGS (ACQUISITION) ACT, 1974

(Received the assent of the President on the Twelfth day of December, 1974).

(As Amended by Acts 5 of 1976, 6 of 1977, 23 of 1978, 14 of 1981, 9 of 1995.)

An Act to provide for the acquisition of electrical undertakings in the State of Karnataka, supplying electricity for the purpose of ensuring better supply of electricity to the general public.

WHEREAS it is expedient for the purpose of ensuring better supply of electricity to the general public, to provide for the acquisition of electrical undertakings in the State of Karnataka supplying electricity to the public other than such undertakings belonging to and under the control of, (a) the Karnataka Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (Central Act LIV of 1948) and (b) a co-operative society, and matters connected therewith and incidental thereto;

BE it enacted by the Karnataka State Legislature in the Twenty-fifth Year of the Republic of India as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Karnataka Electricity Supply Undertakings (Acquisition) Act, 1974.

(2) It extends to the whole of the State of Karnataka.

(3) It shall come into force on such ¹[date]₁ as the Government may, by notification, appoint.

1. Act came into force on 18.12.1974 by notification No. PWD 17 EIG 73 dated 18.12.1974

2. Declaration.- In pursuance of Article 31C of the Constitution of India, it is hereby declared that the provisions of this Act are enacted for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution.

3. Definitions.- In this Act, unless the context otherwise requires,-

(1) 'account year' means the company's financial year;

(2) 'annual account' means the account of the undertaking rendered to the Government annually under and in accordance with the Electricity Act, or where no such account has to be rendered under that Act, the account of the undertaking normally made up for the account year of the undertaking and audited by a Chartered Accountant in practice within the meaning of the Chartered Accountants Act, 1949 (Central Act XXXVIII of 1949);

(3) 'appointed date' means the date appointed under sub-section (3) of section 1;

(4) 'Board' means the Karnataka Electricity Board constituted under section 5 of the Electricity Supply Act, 1948 (Central Act LIV of 1948);

(5) 'companies' means the Amalgamated Electricity Company Limited, Belgaum, the Nipani Electricity Company Limited, Nipani, the Karwar, Electric Supply and Trading Company Limited, Karwar, the Kanara Electric Supply Company Limited, Sirsi and

includes the following concerns engaged in the business of supplying electricity to the public, namely:-

- (a) Manvi Brothers, Gadag;
- (b) Manvi Brothers, Byadgi;
- (c) Manvi Brothers, Ranebennur; and 'company' means any of the companies aforesaid;
- (6) 'document' in relation to an undertaking, includes its books, accounts, registers, maps, plans, section drawings, records of survey and all other documents of whatever nature relating to the undertaking;
- (7) 'Electricity Act' means the Indian Electricity Act, 1910 (Central Act 9 of 1910);
- (8) 'Electricity (Supply) Act' means the Electricity Supply Act, 1948 (Central Act LIV of 1948);
- (9) 'fixed assets' includes works, spare parts, stores, stocks, instruments, tools, motor and other vehicles, office and other equipments and furniture;
- (10) 'Government' means the State Government;
- (11) 'intangible assets' means any amount paid on account of goodwill, under-writers' commission and such preliminary and promotional expenditure shown as a debit in the capital account of the undertaking, as has fairly arisen in promoting electricity supply;
- (12) 'Tribunal' means the Tribunal constituted under section 14;
- (13) 'undertaking; means an undertaking engaged in the business of supplying electricity to the public;
- (14) 'vesting date' means the date on which the undertaking vest in the Government under sub-section (1) of section 4;
- (15) 'works' includes electric supply-lines and any lands, buildings, workshops, projects, machinery, plant or apparatus, required to supply electricity and to carry into effect the objects of a licence granted for the supply of electricity under the Electricity Act;
- (16) words and expressions used herein and not defined in this Act but defined in the Electricity Act, or the rules made under that Act, shall have the meanings respectively assigned to them in that Act or those rules.

4. Undertakings of the Companies to vest in the Government.- (1) With effect on and from the appointed date the undertakings of the companies shall, by virtue of this Act, stand transferred to and vest in the Government.

(2) Every company which after the vesting date, was in possession of, or deriving any benefit from the undertaking vested in the Government under sub-section (1) shall be liable to pay to the Government, for the period, after such vesting for which it was in such possession or deriving such benefit, an amount as compensation for the use, occupation or enjoyment of that undertaking as the prescribed authority may fix in the prescribed manner. Such authority shall take into consideration such factors as may be prescribed.

5. Amount to be given to Companies.- (1) The amount to be given to a company, the undertaking of which vests in the Government under this Act, shall be determined and paid in the manner hereinafter provided.

(2) The amount to be given shall be the aggregate value of the sums specified below:-

- (i) the book value of all completed works in beneficial use pertaining to the undertaking and handed over to the Government (excluding works paid for by consumers) less depreciation calculated in the manner specified in the Schedule;
- (ii) the book value of all works in progress handed over to the Government, excluding works paid for by consumers or prospective consumers;
- (iii) the book value of all stores including spare parts handed over to the Government and in the case of used stores and spare parts, such sum as may be decided upon by mutual agreement between the Government and the companies;
- (iv) the book value of all other fixed assets in use on the vesting date and handed over to the Government less depreciation calculated in the manner specified in the Schedule;
- (v) the book value of all plant and equipment existing on the vesting date but no longer in use owing to wear and tear or to obsolescence, to the extent such value has not been written off in the books of the company less depreciation calculated in the manner specified in the Schedule;
- (vi) the book value of all intangible assets to the extent such value has not been written off in the books of the companies;
- (vii) the sum due from consumers in respect of every hire-purchase agreement referred to in section 6 (1) (ii) less a sum which bears to the difference between the total sum of the instalments and the original cost of the material or equipment, the same proportion as the sum due bears to the total sum of the instalments;
- (viii) any sum paid actually by the company in respect of every contract referred to in section 6 (1) (iii).
- ix) a sum equal to ten percent of the aggregate of the amounts specified in clauses (i) to (vi), in consideration of the compulsory nature of acquisition;

1. *Inserted by Act 14 of 1981 w.e.f. 07.04.1981.*

Explanation .- (a) For the purposes of this sub-section the book value of any fixed asset means its original cost, and shall comprise, -

- (i) the purchase price paid by the company for the asset, including the cost of delivery and all charges properly incurred in erecting and bringing the asset into beneficial use as shown in the books of the undertaking;
- (ii) interest charges on capital expenditure incurred from borrowed money and shown in the books of the undertaking as properly attributable to the asset up to the date of bringing it into beneficial use, at a rate not exceeding six percent per annum;
- (iii) cost of supervision actually incurred, but not exceeding fifteen percent of the sum referred to in paragraph (i).

(b) Where any asset was acquired after the expiry of the period to which the latest annual account relates, or where no annual account has to be rendered under the Electricity Act, the book value of the asset shall be such sum as may be decided upon by the Government after giving an opportunity of being heard to the companies.

(3) The amount to be given according to sub-section (2) less the amounts to be deducted therefrom as provided in this Act shall be the amount due and shall carry interest at the rate of five percent per annum from the vesting date.

(4) The amount due may, subject to rules made in this behalf, be paid in full or in instalments not exceeding five or in bonds, negotiable or non-negotiable carrying interest at the rate specified in sub-section (3) and of guaranteed face value maturing within a specified period not exceeding ten years.

6. General effect of vesting.- (1) The Undertakings of the companies vesting in the Government under section 4 shall be deemed to consist only of property, rights, liabilities and obligations specified hereunder, -

- (i) all the fixed assets of the companies and all documents relating to the undertakings;
- (ii) all the rights, liabilities and obligations of the companies under hire purchase agreements, if any, for the supply of materials or equipment made *bona fide* before the vesting date;
- (iii) all the rights, liabilities and obligations of the companies under any other contract entered into *bona fide* before the vesting date not being a contract relating to the borrowing or lending of money.

(2) All the assets specified in item (i) of sub-section (1) shall vest in the Government free from any debts, mortgages or similar obligations of the companies for attaching to the undertakings:

Provided that such debts, mortgages or obligations shall attach to the amount to be given under this Act for the assets.

(3) In the case of undertakings which vest in the Government under this Act, the licence granted or deemed to be granted for supplying electricity shall be deemed to have been terminated on the vesting date and all the rights, liabilities and obligations of the companies under any agreement to supply electricity entered into before that date shall devolve on the Government:

Provided that where any such agreement is not in conformity with the rates and conditions of supply approved by the Government and in force on the vesting date, the agreement shall be voidable at the option of the Government.

(4) The Government may, by notification, provide for the transfer to, and vesting in, the Board, in such manner and subject to such conditions as may be specified in the notification, of property, rights, liabilities and obligations which have vested in the Government under this Act and thereupon, such property, rights, liabilities and obligations shall stand transferred to, and vest in the Board.

7. Deductions from the amount.- The Government shall be entitled to deduct the following sums from the amount to be given to a company under this Act:-

- (a) the sum, if any, already given in advance by way of any amount to be given under section 5;
- (b) the sum, if any, specified under sub-section (2) of section 4;

- (c) the sum, if any, which may be, or ordered to be, deducted under section 9 or 11;
- (d) the sum due, if any, from the company to the Government or the Board for electricity supplied by the Board for any period prior to one month immediately preceding the vesting date;
- (e) all other sums and arrears of interest, if any, thereon due from the company to the Government or the Board except loans and arrears of interest, if any, thereon:

Provided that instalments of such loans and arrears of interest, if any, thereon which have accrued due during any period prior to one month immediately preceding the vesting date and outstanding on that date shall be deducted;

- (f) the sum, if any, equivalent to the loss sustained by the Government by reason of any property or rights belonging to the undertaking not having been handed over to the Government, the sum of such loss being deemed to be the sum by which the market value of such property or rights exceeds the amount payable therefor under this Act, together with any income which might have been realised as aforesaid;
- (g) all sums paid by consumers by way of security deposit and arrears of interest due thereon on the vesting date in so far as they have not been paid over by the company to the Government, less the sums which according to the books of the company are due from the consumers to the company for electricity supplied by it before the date;
- (h) all advances from consumers and prospective consumers, and all sums which have been or ought to be set aside to the credit of the consumer's fund in so far as such advances or sums have not been paid over by the Company to the Government.

Explanation.- For the purposes of this clause, "Consumers' fund" shall, for any account year prior to the date on which the Sixth Schedule to the Electricity Supply Act came into force mean the amount referred to as such in the bulk supply agreement and, for any account year on and from the said date, it shall mean the amount specified in paragraph II (1) of the said Schedule as the amount to be set apart for distribution to consumers;

(i) if, under any law, award, agreement, contract of service or otherwise, the salary, wages, leave salary, bonus, pension, gratuity, provident fund, security deposit or other payment, becomes payable to a member of the staff after a specified period of service rendered by such member in connection with the undertaking, such member having been transferred to the Government, -

- (a) before the expiry of such specified period, a sum equal to the sum which bears to the full salary, wages, leave salary, bonus, pension, gratuity, provident fund, security deposit or other payment payable after the expiry of the said specified period, the same proportion as the period upto the vesting date bears to the whole of the said specified period;
- (b) after the expiry of such specified period, a sum equal to full such salary, wages, leave salary, bonus, pension, gratuity, provident fund, security deposit or other payment:

Provided that where any reserve fund has been created towards the salary, wages, leave salary, bonus, pension, gratuity, provident fund, security deposit or other payment referred to in this clause and such reserve fund shall vest in the Government under this Act, the amount of such reserve fund so vested shall not be deducted under this clause;

- (j) sums, if any, in the credit of development rebate reserve, contingencies, reserves, tariff and dividend control reserve, consumers rebate reserve, reserve for bad and doubtful debts or any other reserve fund.

7A. Application to the Tribunal.- Any person disputing,-

- (i) the amount determinable and payable under section 5; or,
- (ii) as to which property, rights, liabilities and obligations of the companies vest in the Government under section 6; or
- (iii) the amount liable to be deducted under section 7;

may within three months from the date of commencement of the Karnataka Electricity Supply Undertakings (Acquisition) (Amendment) Act, 1995, apply to the Tribunal.

Provided that the Tribunal may entertain such application after the period specified above if it is satisfied that the person making the application had sufficient cause for not making the application within that period.]¹

1. Section 7A Inserted by Act 9 of 1995 w.e.f. 18.12.1974.

8. Duty to deliver possession of property acquired and documents relating thereto.- (1) In respect of property vesting in the Government under section 4 every person in whose possession or custody or under whose control the property may be, shall deliver up the property to such officer or authority appointed by the Government for the purpose, forthwith and until it is delivered such person shall from the vesting date be deemed to be in possession, custody or control of the property on behalf of the Government.

(2) Any person who on the vesting date has in his possession or custody or under his control any document which has vested in the Government under this Act shall be liable to account for such document to the Government and shall deliver it up to the officer or authority referred to in sub-section (1).

(3) Without prejudice to the other provisions contained in this section it shall be lawful for such officer or authority to take all necessary steps for securing possession of all the assets and document which have vested in the Government under section 4.

9. Duty of the company to supply particulars.- (1) In respect of the undertaking of a company vesting in the Government under this Act, the company shall, within two months from the vesting date or such further period as the Government may allow in this behalf, furnish to the Government, -

- (a) particulars of the book debts and investments belonging to and all liabilities and obligations of the company subsisting immediately before the vesting date; and

(b) particulars of all agreements entered into by the company and in force on the vesting date including any agreements whether express or implied relating to leave, pension, gratuity and other terms of service of any officer or other employee of the company under which by virtue of this Act the Government has or will or may have liabilities or obligations and for this purpose the Government shall afford the company all reasonable facilities.

(2) If the company fails to supply to the Government particulars of book debts, liabilities and agreement within the time allowed to it for the purpose under sub-section

(1), nothing contained in this Act shall have effect so as to transfer any such book debts, liabilities and agreements or to vest the same in the Government:

Provided that nothing in this sub-section shall apply to any agreement if any party to such agreement supplies to the Government, particulars of the agreements within two months from the vesting date and the Government, within a period of six months after such submission of particulars accept the liabilities under the agreement.

(2) The Government may, by notice in writing within a period of six months after submission of the particulars referred to under sub-section (1) intimate to the company that such book debts and investments as are specified in the notice are not included in the property vesting in the Government, whereupon the amount provided by section 5 shall stand reduced by the amount of such excluded book debts and investments and the right of the company to recover and retain such excluded book debts shall remain unaffected by this Act.

10. Right of Government to disclaim certain agreement.- (1) Where it appears to the Government that the making of any such agreement as is referred to in section 9 or any of the terms thereof under which the Government has or will have liabilities was not reasonably necessary for the purposes of the activities of the company or has not been entered into in good faith, the Government may, make an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) such agreement and thereafter the agreement shall have effect accordingly:

Provided that no agreement shall be cancelled or varied except after giving to the parties to the agreement a reasonable opportunity of being heard.

(2) Any person, aggrieved by an order made under sub-section (1) may within such time as may be prescribed make an application to the Tribunal for the variation or reversal of such order and thereupon the Tribunal may confirm, modify or vary such order.

11. Provisions respecting the officers and employees of the company.- (1) Subject to the provisions of sections 10 and 13, every officer or other employee (except a Director, Advisor, Consumer or Auditor) employed before the vesting date in connection with the affairs of the undertakings which have vested in the Government by virtue of this Act, shall become as from that date, an officer or other employee as the case may be, of the Government and shall hold his office or service by the same tenure, at the same remuneration and upon the same terms and conditions and with

the same rights and privileges as to pension, gratuity and other matters as he would have held under the company if its undertakings had not vested in the Government and shall continue to do so unless and until his employment under the Government is terminated after giving him three calendar months notice in writing or paying him three months pay in lieu of such notice or until his remuneration, terms and conditions including the privileges as to pension and gratuity are altered by rules or orders made by the Government:

Provided that nothing contained in this sub-section shall apply to any officer or employee who has by notice in writing given to the Government or to any person nominated in this behalf by the Government, within thirty days from the appointed day intimated his intention of not becoming an officer or other employee of the Government.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947) or in any other law for the time being in force, the transfer of the services of any officer or other employee of the company by virtue of this Act shall not entitle any such officer or other employee to any compensation under this Act or other law and no such claim shall be entertained by any court, tribunal or other authority.

12. Provident and other funds.- (1) Where a company has established a provident fund, superannuation, welfare or other fund for the benefit of its officers or other employees, the moneys relating to the officers or other employees whose services have become transferred by or under this Act to the Government shall out of the moneys standing on the vesting date to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to and vest in the Government.

(2) The moneys which stand transferred under sub-section (1) to the Government shall be dealt with by the Government in such manner as may be prescribed.

13. Transaction resulting in dissipation of assets.- (1) This section shall apply where the company has, after the first day of January 1972 and before the vesting date,-

- (a) made any payment to any person without consideration or for an inadequate consideration;
- (b) sold or disposed of any of its properties or rights without consideration or for an inadequate consideration;
- (c) acquired any property or rights for an excessive consideration;
- (d) entered into or varied any agreement so as to require an excessive consideration to be paid or given by the company;
- (e) entered into any other transaction of such an onerous nature as to cause a loss to or impose a liability on the company exceeding any benefit accruing to the company; or
- (f) sold or otherwise transferred any equipment or machinery or other property of book value exceeding rupees ten thousand; and

the payment, sale, disposal, acquisition, agreement or variation thereof or other transaction or transfer, was not reasonably necessary for the purpose of carrying on the undertakings of the company, or was made with lack of prudence on the part of the company regard being had, in either case, to the circumstances at the time.

(2) The Government may, at any time, within ¹[five year]¹ from the vesting date, apply for relief to the Tribunal in respect of any transaction to which in the opinion of the Government this section applies and all parties to the transaction shall, unless the Tribunal otherwise directs, be made parties to the application.

1. Substituted by Act 23 of 1978 w.e.f. 18.12.1974.

(3) Where the Tribunal is satisfied that the transaction in respect of which an application is made is a transaction to which this section applies, then, unless, the Tribunal is also satisfied that the transaction was a proper transaction made in the ordinary course of business, regard being had to the circumstances at the time, and was not in any way connected with any provisions made by this Act, or in anticipation of the making of any such provision, the Tribunal shall make such order against any of the parties to the application as it thinks just having regard to the extent to which the parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case.

(4) Where an application is made to the Tribunal under this section in respect of any transaction and the application is determined in favour of the Government, the Tribunal shall have exclusive jurisdiction to determine any claims outstanding in respect of the transaction. On any such application, the Tribunal may order that Government deduct from the amount payable to the company under this Act, such amount as it may consider to be the loss sustained by the Government by virtue of any transaction referred to in sub-section (1).

(5) Any amount ordered by the Tribunal to be deducted from the amount under sub-section (4) shall be a first charge on the amount payable to the company and shall have priority over the claims of any person in respect of the amount payable to the company.

(6) For the purpose of satisfying the first charge referred to in sub-section (5), the Government shall withhold ten per centum of the amount payable to the company under section 5.

(7) After satisfying the first charge in favour of the Government under sub-section (5), the balance, if any of the amount withheld under sub-section (6), shall be paid to the company:

Provided that the Tribunal may at any earlier time order payment of such amount as is in excess of the amount which in its opinion would be sufficient to satisfy the first charge under sub-section (5):

Provided further that all payments under this sub-section shall be made in cash with interest at half percent from the vesting date.

14. Constitution and powers of Tribunal.- (1) The Government shall by notification constitute a tribunal consisting of an officer not below the rank of a District judge.

(2) For the purpose of deciding any matter [under sections 5, 6, 7, 7A, 10 and 13], the Tribunal may require any or all the parties to state their case in respect of such matter and may call upon them to adduce such evidence as may be necessary for the determination of the case.

1. Substituted by Act 9 of 1995 w.e.f. 18.12.1974

(3) The Tribunal shall have the powers of a Civil Court while trying a suit under the Code of Civil Procedure 1908 (Central Act V of 1908) in respect of the following matters:-

- (a) summoning and enforcing attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) such other matters as may be prescribed.

(4) The Tribunal may regulate its own procedure and review its decision in the event of there being a mistake on the fact of the record or correct any arithmetical or clerical error therein but subject thereto and subject to the provisions of sub-section (5), the decision of the Tribunal on any matter within its jurisdiction shall be final and shall not be called in question in any court of law.

(5) The Government or any person aggrieved by any order of the Tribunal may, within thirty days from the date of the order, appeal to the High Court of Karnataka and the High Court may pass such orders thereon as it thinks fit.

15. Penalties.- (1) If any person wilfully withholds or fails to deliver to the Government as required by section 8 any documents which may be in his possession or wrongfully obtains possession of any property of the company which has vested in the Government under this Act, or having any such property in his possession wrongfully withholds it from the Government, or wilfully applies to purposes other than those expressed in or authorised by this Act, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees, or with both and in the cases of a continuing offence with additional fine which may extend to five hundred rupees for every day after the first during which the offence continues and may be ordered by the court trying the offence to deliver up or refund within the time to be fixed by the court any such document or property improperly obtained or wrongfully withheld or wilfully misapplied, and in default, to suffer imprisonment for a further period which may extend to one year.

(2) Whoever fails without reasonable cause, to comply with any of the provisions of this Act or the rules made thereunder, or any direction or order issued in pursuance thereof shall, if the case be not governed by sub-section (1), be punishable with fine which may extend to five thousand rupees and in the case of a continuing offence with additional fine which may extend to five hundred rupees for every day after the first during which the offence continues.

(3) No court shall take cognizance of any offence punishable under this section except with the previous sanction of the Government or of an officer authorised by it in this behalf.

16. Offences by companies.- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section,-

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

17. Protection of action taken under the Act.- No suit, prosecution, or other legal proceeding shall lie against the Government or any officer or servant of the Government or any person acting under the direction of the Government or of any officer or servant of the Government in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder.

18. Power to make rules.- The Government may by notification make rules to carry out the purposes of this Act.

19. Power to remove difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the Government may, by notified order, not inconsistent with the provisions of this Act remove the difficulty:

Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.

20. Laying of rules and orders before the State Legislature.- Every rule made under this Act and every order issued under section 19 shall be laid as soon as may be after it is made or issued before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or order or both Houses agree that the rule, or order should not be made, the rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under such rule or order.

21. Effect of other laws.- (1) No provision of the Electricity Act or of the Electricity Supply Act or of any rule made under any of those Acts or of any instrument having effect by virtue of any of those Acts or any rule made thereunder shall in so far as it is inconsistent with any of the provisions of this Act have any effect.

(2) Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of the Electricity Act and the Electricity Supply Act.

22. Act to apply to undertaking voluntarily handed over to Government.- Where an undertaking has been voluntarily handed over by a company to the Government before the commencement of this Act, and the Government have taken possession of such undertaking, the provisions of this Act shall apply to such undertaking as if such undertaking vests in the Government under this Act. All the provisions of this Act shall accordingly apply to such undertaking:

Provided that where under this Act any period is to be computed from the vesting date, such period shall, in relation to any undertaking to which this section applies, be computed from the date of the publication of this Act in the official Gazette.

SCHEDULE

(See Section 5)

For purposes of payment of amount under section 5 the depreciation shall be calculated at annual rates arrived at by dividing ninety percent of the book value of each asset by the number of years of life of the asset as specified in the Table below. For the account year in which an asset was brought into beneficial use, the depreciation shall be calculated at half the annual rate and for the period after the last completed account year till the vesting date, the depreciation shall be calculated **pro rata**. Depreciation shall not be calculated for any period beyond the life of the asset as prescribed herein.

TABLE

Description of assets 1	Number of years or period 2
A. Land owned under full title ..	Infinite
B. Land held under lease,- ..	The period of lease or the
(a) for investment in the land	period remaining unexpired on the assignment of the lease.
(b) for cost of clearing site ..	The period of the lease remaining unexpired at the date of clearing the site.
C. Assets purchased new,-	
(a) Building and Civil engineering works of a permanent character, not mentioned above.	
(i) Offices and show rooms ..	Fifty

(ii)	Temporary erections such as wooden structures	..	..	Five
(iii)	Others	..	..	Fifty
(b)	Transformer, transformer kiosk, sub-station equipment and other fixed apparatus (including plant foundations),-			
(i)	Transformers (including foundations) having a rating of 100 kilovolt amperes and over	..	..	Thirty-five
	(ii) Others	..	..	Twenty-five
(c)	Switchgear, including cable connections	..	..	Twenty
(d)	Batteries	..	..	Ten
(e)	(1) Underground cables, including joint boxes and disconnecting boxes		..	Forty
	(2) Cable duct system	..	..	Sixty

(f) Overhead lines including supports, -

(i) lines or steel or reinforced concrete supports operating at nominal voltages higher than 13.2

	kilo volts	..	.	Thirty
(ii)	other lines on steel or reinforced concrete supports	..	.	Twenty-five
(iii)	Lines on wood supports	..	.	Twenty
g)	Meters	..	.	Fifteen
h)	Self-propelled vehicles	..	.	Seven
i)	Station machine tools	..	.	Twenty
(j)	Office furniture and fittings	..	.	Twenty
(ii)	Office equipment	..	.	Ten
k)	Apparatus let on hire, -			
(i)	Other than motors	..	.	Seven
(ii)	Motors	..	.	Twenty

D. Assets purchased second hand and assets not otherwise provided for in this table.

Such reasonable period as the Government determine in each case having regard to the nature, age and condition of the asset at the time of its acquisition by the Government.

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NOTIFICATION

Bangalore dated 18-12-1974 [No. PWD 17 EIG 73]

S.O. 2591.- In exercise of the powers conferred by sub-section (3) of section 1 of the Karnataka Electricity Supply Undertakings (Acquisition) Act, 1974 (Karnataka Act 36 of 1974), the Government of Karnataka hereby appoints the 18th day of December 1974 as the date on which the said Act shall come into force.

By Order and in the name
of the Governor of Karnataka

S. VARADAN,
Commissioner for Public Works and
Secretary to Government,
Public Works and Electricity Department.

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